

IRS News Release

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Judge Grants Request of IRS Office of Professional Responsibility to Disbar CPA

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WASHINGTON — An administrative law judge has issued a decision and ordered that Joseph R. Banister be disbarred from practice before the Internal Revenue Service. Banister is a Certified Public Accountant from San Jose and former IRS criminal investigation agent.

The IRS Office of Professional Responsibility, in a complaint against Banister, alleged that he was misrepresenting the law to taxpayers and that he failed to file his own federal income tax returns for tax years 1999-2002. OPR investigates allegations of disreputable conduct and incompetence against tax practitioners and enforces the standards of practice for those who represent taxpayers before the IRS, as detailed in Treasury Department Circular 230.

According to public documents, the judge found that Banister provided erroneous advice to taxpayers, including improperly advising them that they were not required to file returns because the 16th Amendment to the Constitution was not properly ratified. Banister also provided erroneous advice that returns were not required because Sections 861 through 865 of the Internal Revenue Code define "income" in a manner which excluded their earnings. The original complaint against Banister was later amended to charge Banister with not filing his own returns for tax years 1999-2002.

Judge William B. Moran in his Dec. 24, 2003 decision said that "the very significant problem with Banister's advice to his clients is that it is absolutely wrong." Judge Moran further noted that "Banister's assertions have been addressed by so many federal courts that they are no longer afforded the dignity of repeating the explanations as to why the claims are meritless." The decision followed a public hearing requested by Banister, which was held in San Francisco on December 1, 2003. The judge could have ordered disbarment, suspension or a reprimand, but he determined that nothing short of disbarment was appropriate under the facts. The judge's decision will become the final decision of the agency unless it is appealed within 30 days. The decision is available at <http://www.irs.gov/pub/irs-utl/banister.pdf>.

In an unrelated case, the Department of Justice announced, on Dec. 31, 2003, that a preliminary injunction has been issued barring a lawyer and a certified public accountant, and organizations that they are affiliated with, from representing taxpayers before the Internal Revenue Service, preparing Federal tax returns, and otherwise obstructing IRS tax administration through frivolous and harassing tactics. The DOJ news release can be found at http://www.usdoj.gov/tax/03_tax_730.htm. The Justice Department has sought and obtained injunctions recently against a number of tax-scam promoters. More information about these cases is available on the Justice Department Web site at <http://www.usdoj.gov/tax/taxpress2003.htm>.

More information about phony tax arguments can be found on the IRS Web site at www.irs.gov.

As part of the broader effort to strengthen professional standards, IRS Commissioner Mark W. Everson recently selected Cono Namorato as the new Director of the Office of Professional Responsibility. “Cono shares my concern about the erosion of professional standards among some attorneys and accountants,” Everson said. “His appointment should signal an expectation that tax practitioners live up to their professional obligations.”

The IRS has taken several steps recently to enhance the effectiveness of this Office of Professional Responsibility. Over the last year, staff of the office has been doubled and its director now sits on the IRS Enforcement Committee, a panel of senior agency executives who meet regularly to develop strategies on the top compliance problems facing the IRS. The Commissioner also recently asked this office to conduct a broader review of the IRS’ overall relationship with the practitioner community.